IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7733 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C J N Z MADRESA

Versus

DIST. EDUCATION OFFICER

Appearance:

Ms.Kalpana Brahmbhatt for Ms. VASUBEN P SHAH
for Petitioner
Ms.Harsha Devani, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1
MR JD AJMERA for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 22/09/2000

ORAL JUDGEMENT :

This petition is filed by the petitioner challenging the order passed by the Gujarat Secondary Education Tribunal ("the Tribunal" for brevity) dated

8.10.1992 in Application No.97 of 1992. The operative part of the order reads as under:

> "In the result the present application is returned to the applicant for want of jurisdiction as at present no dispute against any of the 3 opp. schools has concretised. However, while parting with this matter, it is clarified that it will be open to the DEO to pass an appropriate order as per rules for absorbing the applicant at any school including any school which claims to be a minority institution."

2. It is submitted by Ms.Brahmbhatt that by an order dated 28.10.1992, respondent no.2, Jagdishchandra Manubhai Desai, who was the applicant in Application No.97 of 1992 before the Tribunal has already been absorbed in some other school. Therefore, the main grievance of the petitioner does not survive.

3. However, it is submitted that the Tribunal while passing the aforesaid order had made an observation to the effect that,

> ".. .. However, while parting with this matter, it is clarified that it will be open to the DEO to pass an appropriate order as per rules for absorbing the applicant at any school including any school which claims to be a minority institution." (emphasis supplied)

The submission made is that by virtue of this observation, the District Education Officer will be passing an order of absorption of the employees even in a school which claims to be a minority institution, which is not in accordance with law; and that the same will be in contravention of express provisions of law. When it was put to the learned counsel appearing for the petitioner as to whether the District Education Officer has passed any order under the aforesaid observations during these 8 years, it is submitted that the same might not have been passed in view of the interim relief granted by this Court in terms of para 15(EE), on 28.10.1992, when the Court admitted this petition. Para 15(EE) reads as under:

> "Be pleased to grant interim relief restraining the resp. no.1 from passing any order of absorption of the resp. no.2 in the minority institutions run by C.J.N.Z. Madrasa Committee during the pendency of this petition in pursuance

of the order dated 8.10.1992 passed by the resp. no.3 at annexure 'C'."

4. The apprehension of the petitioner is not well founded. It will always be open to the petitioner or for that reason to any other institution, which claims to be a minority institution to challenge an order by which they are aggrieved as and when it is passed by the District Education Officer under these observations.

5. With the aforesaid observations the petition stands disposed of. Rule is discharged. Interim relief is vacated. No order as to costs.

22nd September 2000 (Ravi R. Tripathi, J.)

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